

MELLINGER KARTZMAN LLC

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Order Filed on November 9, 2022

by Clerk

U.S. Bankruptcy Court

District of New Jersey

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

In re:

**JAMES X. REZABALA and ERIKA
M. PENACHI,**

Debtors.

Case No. 19-25396 (VFP)

Chapter 7

Honorable Vincent F. Papalia

**CONSENT ORDER SURCHARGING BANK OF AMERICA FOR COSTS INCURRED
IN REMOVING AND REMEDIATING THE UNDERGROUND STORAGE TANK
AT 3365 KENNEDY BOULEVARD, JERSEY CITY, NEW JERSEY PURSUANT TO
11 U.S.C. § 506(c)**

The relief set forth on the following pages two (2) through three (3) is hereby ORDERED.

DATED: November 9, 2022

A handwritten signature in black ink, appearing to read "Vincent F. Papalia".

**Honorable Vincent F. Papalia
United States Bankruptcy Judge**

Debtor: James X. Rezabala and Erika M. Penachi
Case No.: 19-25396 (VFP)
Caption: Consent Order Surcharging Bank of America for Costs Incurred in Removing and Remediating the Underground Storage Tank at 3365 Kennedy Boulevard, Jersey City, New Jersey Pursuant to 11 U.S.C. § 506(c)

THIS MATTER having been brought before the Court by Steven P. Kartzman, the Chapter 7 Trustee (the “Trustee”), by and through his attorneys Mellinger Kartzman LLC, by Motion for entry of an Order Surcharging Bank of America for Costs Incurred in Removing and Remediating the Underground Storage Tank at 3365 Kennedy Boulevard, Jersey City, New Jersey Pursuant to 11 U.S.C. § 506(c) (the “Motion”); and the Trustee and Bank of America (“BANA”) having agreed to amicably resolve the issues on the terms set forth in this Consent Order, as appears from the signatures of the parties affixed hereto, and good cause having been shown, it is hereby:

ORDERED AS FOLLOWS:

1. The Trustee is authorized and directed to distribute the sale proceeds as established in the Order entered by the Court on March 25, 2021, at Docket Number 37, and as modified by the Order entered by the Court on June 15, 2022 at Docket Number 63.

2. The Trustee and BANA agree that the Trustee shall remit payment to BANA in the sum of \$260,000.00, plus interest at the *per diem* rate of \$16.37, from and after September 15, 2022 until paid. The reduction to \$260,000.00 from the full amount due BANA reflects partial payment towards the sum of \$48,334.75 owed to Brinks Tank & Environmental Service for the removal of the Underground Storage Tank (“UST”) and remediation of contaminated soil, and towards payment of the sum of \$8,619.00 to satisfy the legal fees incurred by the estate in connection with the need to remove and remediate the leaking UST, pursuant to 11 U.S.C. § 506(c).

3. The reduction in the payoff amount to BANA is for the benefit of the bankruptcy estate only pursuant to 11 U.S.C. § 506(c), and not for the benefit of the co-owner of the Property, Geraldina Obando (the “Co-Owner”).

Page 3 of 4

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4. Claim 12-1 on the Claims Register filed by BANA shall be deemed satisfied by the payment pursuant to this Consent Order, and shall be withdrawn in its entirety by BANA following receipt of full payments from the Estate.

5. The terms of this Consent Order are subject to the Court's approval and the issuance of a Notice of Settlement (the "Notice") and the following:

- (a) If no objection to the Notice is filed, the issuance and docketing of a Certification of No Objection by the Clerk of the Bankruptcy Court; or
- (b) If any objection to the Notice is filed, the overruling of any such objection by this Court.

In the event that an objection to the settlement is filed and sustained, the parties shall be restored to their pre-settlement positions.

6. The parties, and anyone who succeeds to their rights and responsibilities hereunder, including their successors and/or assigns, are bound by this Consent Order. This Consent Order is made for the benefit of the parties and all who succeed to their rights and responsibilities.

7. The Bankruptcy Court shall retain exclusive jurisdiction to adjudicate all matters arising under or in connection with this Consent Order.

Page 4 of 4

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*The undersigned hereby consent to
the form and entry of the within Order:*

MELLINGER KARTZMAN LLC
*Attorneys for Steven P. Kartzman
as Chapter 7 Trustee*

By: Steven A. Jayson
STEVEN A. JAYSON, ESQ.

Dated: October 13, 2022

FRENKEL LAMBERT WEISS WEISMAN
& GORDON, LLP
Attorneys for Bank of America, N.A.

By: Douglas McDonough
DOUGLAS MCDONOUGH, ESQ.

Dated: October 12, 2022